

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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AUGME TECHNOLOGIES, INC.,

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Plaintiff,

§

v.

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TACODA, INC.,

CIVIL ACTION NO. 07-CV-7088 (CM)(GWG)

Defendant.

Hon. Colleen McMahon

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JOINT STIPULATION AND [PROPOSED] ORDER ADDING AOL INC.
AS A DEFENDANT

/87

Plaintiff Augme Technologies, Inc. ("Augme"), defendant TACODA, Inc. ("TACODA"), and AOL, Inc. ("AOL") (collectively, the "Parties") through this Stipulation hereby jointly stipulate that AOL Inc. be added as a defendant and counterclaimant in this lawsuit and that TACODA LLC be substituted for Tacoda, Inc. in this lawsuit, subject to the terms of this Stipulation.

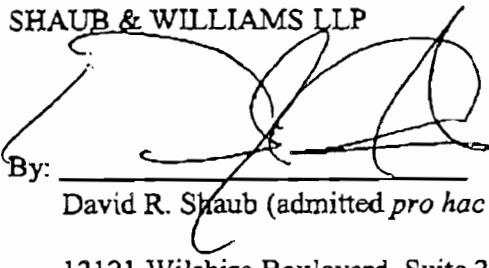
WHEREAS, on August 9, 2007, Augme filed a Complaint in the instant action alleging patent infringement claims against TACODA;

WHEREAS, on September 6, 2007, AOL Inc.'s predecessor in interest, AOL LLC, acquired all of the issued and outstanding shares and, thus, all of the assets and liabilities, of TACODA, Inc.; TACODA, Inc., thereafter, became a division of AOL LLC; and Tacoda, Inc. was thereafter converted to a Delaware limited liability company, TACODA LLC;

WHEREAS, on September 12, 2007, Augme filed an Amended Complaint in the instant action alleging patent infringement claims against TACODA;

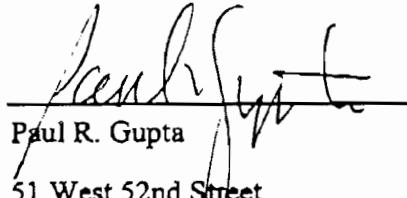
WHEREAS, on October 19, 2007, TACODA filed its Answer and Counterclaim against Augme in the instant lawsuit;

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Counterclaimants TACODA LLC. and
AOL Inc.

This stipulation disposes of Docket #91

SO ORDERED: DATE: 9/17/2010

GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUGME TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

v.

TACODA LLC, a Delaware limited
liability Company, formerly known as
TACODA, INC., a Delaware Corporation;
AOL INC., a Delaware Corporation,
formerly known as AOL LLC, a Delaware
limited liability company.

CASE NO. 1:07-cv-07088-CM-GWG

SECOND AMENDED COMPLAINT

Defendants.

SECOND AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff, Augme Technologies, Inc., by its attorneys and for its Complaint,
alleges as follows:

PARTIES

1. Plaintiff, Augme Technologies, Inc. ("Augme" or "Plaintiff"), formerly known as Modavox, Inc., is a Delaware corporation having its principle place of

Exhibit A

business at 43 West 24th Street, Suite 1113, New York, NY 10010. Plaintiff is the assignee of record of the full rights to and title in U.S. Patent No. 6,594,691 (hereinafter, "the '691 patent") and U.S. Patent No. 7,269,636 ("the '636 patent").

2. On information and belief, defendant Tacoda, LLC, formerly Tacoda, Inc., (hereinafter, "Tacoda") is a Delaware limited liability company having its principal place of business at 345 Seventh Avenue, 8th Floor, New York, New York 1001.

3. On information and belief, defendant AOL Inc. (hereinafter, "AOL") is a Delaware corporation, having its principal place of business at 770 Broadway New York, NY 10003.

4. Tacoda and AOL are sometimes referred to herein as "Defendants".

NATURE OF THE ACTION

5. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281.

6. Plaintiff charges Defendants with infringement of the '691 patent. (Exhibit 1). Plaintiff further charges Defendants with infringement of the '636 patent. (Exhibit 2). Plaintiff seeks a permanent injunction under 35 U.S.C. § 283 against continued infringement by Defendants, their agents, servants, employees and assigns, and all those acting in concert with Defendants. AOL is charged as a defendant and counterclaimant in this lawsuit with respect to the claims, existing prior to the filing of this Second Amended Complaint, asserted against Tacoda and the counterclaims asserted by Tacoda against Augme.

JURISDICTION AND VENUE

7. Jurisdiction over the subject matter hereof is conferred upon this court by 28 U.S.C. §§ 1331 and 1338(a), as patent infringement claims arise under the patent laws of the United States.

8. Venue in this judicial district is proper under the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400(b), because both the '691 patent and the '636 patent were infringed in the State of New York, and because Defendants have their principal places of business within this district.

FACTUAL BACKGROUND

9. Plaintiff is the sole owner of both the '691 and the '636 patents, which were duly and legally issued by the United States Patent and Trademark Office (hereinafter "USPTO"), and copies of which are included as Exhibits 1 and 2, respectively.

10. Upon information and belief, for a period of time, the length of which is unknown to Plaintiff prior to discovery, Defendants have operated a business, for profit, that uses Plaintiff's technology claimed and described in both the '691 and '636 patents. Defendants have neither sought nor received authorization to use Plaintiff's patented technology.

COUNT ONE

11. Plaintiff incorporates the allegations of Paragraphs 1-10 above as if fully set forth herein.

12. Defendants make, use, sell, offer for sale and/or induce others to use in the United States, methods and related devices covered by one or more claims of the '691 patent.

13. Defendants' actions thus constitute infringement of the '691 patent in violation of 35 U.S.C. § 271.

14. By reason of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer monetary damages and irreparable harm.

COUNT TWO

15. Plaintiff incorporates the allegations of Paragraphs 1-14 above as if fully set forth herein.

16. Defendants make, use, sell, offer for sale and/or induce others to use in the United States methods and related devices covered by one or more claims of the '636 patent.

17. Defendants' actions thus constitute infringement of the '636 patent in violation of 35 U.S.C. § 271.

18. By reason of Defendants' acts of infringement, Plaintiff has suffered and will continue to suffer monetary damages and irreparable harm.

PRAYER FOR RELIEF

19. WHEREFORE, Plaintiff prays for a permanent injunction under 35 U.S.C. § 283 against continued infringement by Defendants, their agents, servants employees and assigns, and all those acting in concert with them; an accounting for compensatory damages, including interest and costs under 35 U.S.C. § 284; and such other and further relief as this Court deems just and proper. AOL shall be responsible for any judgment or order on or related to those claims, existing prior to the filing of this Second Amended Complaint, that may be issued by this Court after the exhaustion of any appeals.

DEMAND FOR JURY TRIAL

Plaintiff Augme Technologies, Inc. hereby demands a jury trial on all issues.

Dated: September 17, 2010

By: /s/David Shaub
David R. Shaub,
Lisbeth Bosshart,
Attorneys for Plaintiff,
AUGME TECHNOLOGIES, INC.